IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 662 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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SUPERINTENDENT ENGINEER & 2 - Appellant(s)
Versus
JASVANTBHAI SHIVSHANKER BHATT & 4 - Defendant(s)

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Appearance :
MS SEJAL K MANDAVIA for Appellant(s) : 1 - 3.
MR NIRAJ V ASHAR for Defendant(s) : 1,
None for Defendant(s) : 2, 4,
MR RAJNI H MEHTA for Defendant(s) : 3,
DELETED for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellants have challenged the judgement and award dated 17.12.88 passed by the Motor Accident Claims Tribunal (Main), Junagadh in MACP No. 359 of 1983 whereby the Tribunal awarded Rs. 30,800/- payable to the original claimants by the original opponent nos. 1,2,4 and 7 with interest at the rate of 12% per annum from the date of application till realisation.

2. The original claimants had filed claim petition

seeking compensation to the tune of Rs. 50,000/- in respect of the accident which occurred while the original claimant was travelling in a hired auto-rickshaw bearing no. GTW 736 driven by the original opponent no.7 towards Veraval bus stand. When the auto reached Char Chowk junction, it is alleged that the original opponent no.4 driving an ambassador car bearing no. GTU 821 in a rash and negligent manner dashed against the auto as a result of which the original claimant sustained serious injuries. The claim petition came to be filed under the said circumstance. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellants has contended that the Tribunal has erred in holding that the accident in question took place on account of the rash and negligent driving of Ambassador Car No. GTU 821 and not holding that the accident was caused only due to the rash and negligent driving of the auto-rickshaw bearing no. GTW 735. She has further contended that the Tribunal has erred in assessing the monthly income of the original claimant at Rs. 800/- and thereby awarded the amount on a much higher side and outside the bracket.

4. Heard learned counsel for the parties and gone

through the materials placed on record including the award of the Tribunal. The Tribunal while deciding the issue of contributory negligence in para 11 of the award has gone into the evidence in detail and has apportioned the contributory negligence between the car and the auto-rickshaw at 80% and 20%.

4.1 As a result of perusal of records, it is borne out that though the rickshaw had nearly come at the junction of the four roads, the car driver dared to drive the car with a view to cross the four-road junction which can be termed to be the negligence on his part. However, at the same time, when it was the duty of the rickshaw driver to allow the traffic coming from the right hand side, the car in the present case, to pass first, he came driving right till the junction of the four roads, as a result of which he also cannot escape the liability of negligence. Keeping in mind that the onus of discharging the burden of proof in a civil case lies on the claimant, the Tribunal in absence of proper proof on the part of the ambassador car driver, proceeded by apportioning the contributory negligence at 80% in light of the fact that the ambassador car was a comparatively heavier vehicle and that the driver had already seen that the rickshaw was at a distance of about 5 ft from the junction. I am

in complete agreement with the reasonings adopted and findings arrived at by the Tribunal.

5. In the premises aforesaid, the appeal is dismissed. No order as to costs.

(K.S. JHAVERI, J.)

Divya//